HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No. 18968 of 2007

Date: 13.11.2007

Between:

Maila Rajanarsu

… Petitioner

and

The Chief General Manager & Estate Officer,
The Singareni Collieries Co.Ltd. (A Government Company),
Kothagudem Area, Kothagudem, Khammam District.

… Respondent

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O R D E R:

This Court ordered notice before admission on 11.09.2007 and granted status quo for a limited period which is being extended from time to time. W.V.M.P.No.2708 of 2007 is filed to vacate the interim order.

2. Heard Sri V.H.V.R.R.Swamy, the learned counsel representing the writ petitioner and also Sri Nandigam Krishna Rao, the learned Standing Counsel representing the respondent-vacate petitioner.

3. The writ petition is filed for a writ of certiorari to call for the records connected with Form-A notice Public Premises Eviction Case No.KGM/EST/22 dated 10.07.2007 of the second respondent and quash the same and pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

4. It is stated that the petitioner is the owner and possessor of agricultural land measuring Ac.3.00 situated at Survey No. 1/1 of Garimallapadu Village, Kothagudem Mandal, Khammam District for 50 years and she has been paying the land revenue regularly. It is further stated that the Mandal Revenue Officer issued notice under Section 7 of the Andhra Pradesh Land Encroachment Act on 15.12.1990, for which the petitioner submitted explanation on 20.12.1990; that later on, the Mandal Revenue Officer passed order dated 31.12.1990 and dropped the proceedings. Further it is stated that when the respondent herein tried to interfere with her peaceful possession and enjoyment over the land, she filed O.S.No.147 of 1995 in the Court of the Principal District Munsif at Kothagudem which was dismissed on 03.09.1998; that the appeal (A.S. No. 45 of 1998) preferred by him in the Court of the Additional Senior Civil Judge, Kothagudem was allowed on 05.06.2006 and it has become final. Further, it is stated that the respondent issued notice on 10.07.2007 in Public Premises

Eviction Case No.KGM/EST/22; that the respondent has no power or authority to issue notice under the Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1968, as amended by Act No.15 of 1986. It is further stated that as per Section 2-H, unauthorised occupation in relation to any public premises means 'the occupation by any person of the public premises without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever'. It is further stated that though Section 3 mandates that the name of the Estate Officer should be notified in the official Gazette, it was not done in the case of the respondent. In such circumstances, the petitioner approached this Court praying for the relief specified supra.

5. Counter-affidavit is filed narrating several factual details. The Estate Officer of the respondent Company had sworn to the counter-affidavit. The maintainability of the writ petition had been questioned in paragraph 3 of the counter-affidavit. It is stated in para 5 that the respondent company is a Government company registered under the Companies Act, 1956 with 51% of share holding in favour of the Government of Andhra Pradesh and 49% with the Union of India; that the respondent is a coal industry engaged in coal mining and other allied activities and for the said purpose, it acquires huge extents of land by means of lease holding rights, land acquisition activities, etcetera. Further, it is stated that the respondent acquired leasehold rights on Ac.776-00 in Survey No.1/1 of Garimallapadu Village, Kothagudem Mandal, Khammam District by way of principal mining lease dated 07.02.1927; that the schedule property is part and parcel

of the land already acquired by the respondent company and that it has been paying non-agricultural land assessment tax regularly. It is also stated that the averments made by the petitioner in para 3 of his affidavit are not known to the respondent; that the schedule land is not government land and, hence, the Mandal Revenue Officer has no authority to issue certificate in respect of the same; that under the guise of the said certificate, the petitioner cannot seek shelter against the proceedings initiated by the respondent. It is further stated that in the appeal filed by the petitioner in A.S.No.45 of 1998 against the judgment dated 03.09.1998 in O.S. No. 147 of 1995, the learned Additional Senior Civil Judge (FTC), Kothagudem gave liberty to the respondent to invoke the provisions of the Andhra Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and, therefore, the respondent did not file any appeal. It is further stated that the Estate Officer appointed under the Act is empowered to initiate necessary action for eviction of the unauthorised occupants from the public premises; that the Government vide G.O.Ms.No.169 dated 23.08.1993 appointed the General Mangers of the respondent company as Estate Officers for discharging the duties under the provisions of the 1971 Act. It is also stated that as per the said G.O., the respondent issued show cause notice dated 10.07.2007 under Form-A. It is also stated that this Court in **Somaraju Ram Manohar v. Estate Manger, Kothagudem, SCCL** (W.P. No. 22834 of 1996), on 10.04.2000 passed the following order:

"This is a writ petition filed against the show cause notice issued under the A.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1968, as amended by Act No.15 of 1986. There was no cause of action for the petitioner to file this writ petition. No orders have been passed against the petitioner. Only he has been asked to

show cause against the proposed eviction. Even if the eviction orders were passed against the petitioner, he would have a remedy under the Act of filing an appeal. As such the writ petition is highly misconceived and it is accordingly dismissed."

6. As can be seen from the respective stands taken by the learned counsel for the parties, the whole question in controversy is whether the notice impugned in the writ petition is in accordance with law. The question of jurisdiction of the authorities or the competency of the authority to issue the impuned notice is being called in question. The learned counsel for the writ petitioner would contend that the respondent is not the competent authority who can issue the show cause notice and on the contrary, the learned Standing Counsel for the respondent would state otherwise that the impugned notice is in accordance with law. It is needless to say that it is only a show cause notice.

7. In the light of the facts and circumstances of the case, liberty is given to the writ petitioner to raise all these grounds before the respondent-Estate Officer and let the respondent decide the same and any other further objections which may be raised by the petitioner in this regard. Let the objections be filed within a period of two weeks from the date of receipt of a copy of this order and let the respondent decide such objections within a period of two weeks thereafter and till then, status quo obtaining as on today shall be maintained.

8. The writ petition is disposed of accordingly. No order as to costs.

(P.S. NARAYANA, J)

November 13, 2007

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